

## Understanding Violence from a Developmental Perspective

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The creation of the juvenile justice system in 1899 was premised on the notion that, because of the normal processes of development, adolescents differ from adults in legally relevant ways. In the last two decades, however, changes in the legal response to juveniles charged with delinquent and criminal acts has called that premise into question. A number of states have increased the availability of, and in some situations mandated the use of mechanisms to transfer juvenile offenders to criminal court. Practically speaking, these juveniles are considered to be adults and are prosecuted as such.

Developmental psychology, which focuses on the scientific study of changes in intellectual, social, and emotional development over time, can inform policy regarding how the justice system responds to juvenile offenders. Specifically, we can research the presumptions that the legal system makes about the comparability of adolescent and adult offenders. One such presumption concerns adolescents' participation in the legal process as defendants.

Much of the policy debate has concerned where to process juveniles (juvenile versus criminal court) but virtually no attention has focused on how to process them through the legal system. All defendants must have certain abilities in order to be tried in the criminal justice system. Delineated by the U.S. Supreme Court in the 1960 Dusky decision, this legal threshold of competence to stand trial, can be described in three parts:

- *Understanding* the legal process (e.g., what is the job of a defense attorney?  
What rights do you give up if you plead guilty)
- *Appreciating* the significance of your own situation (e.g., will you be treated more or less fairly by the judge than other defendants charged with your crime? What are the circumstances that might make you different?)
- *Reasoning* about the situation and relating relevant information to counsel (e.g., why should you tell your lawyer certain facts about the case? Should you plead guilty or not guilty?)

These are the minimal capacities required in order for a defendant to be prosecuted. We should not proceed against defendants who are so impaired that they cannot assist in their own defense. We presume that adults are able to meet these minimal requirements. Very rarely, some adults may be so impaired, usually with severe mental illness or mental retardation, that they cannot participate and are found incompetent.

The same concerns about mental illness and mental retardation apply to juveniles, but youth may be at greater risk than adults for a third reason - their ongoing developmental processes. That is, they may still be developing the intellectual, social, and emotional capacities necessary to be a competent defendant. At this point, we simply don't know whether juveniles below a certain age have the capacities necessary to be competent to stand trial, or to participate effectively as a defendant.

Adolescence is a time of tremendous change in intellectual, social, and emotional capacities - the very capacities of concern for competence and effectiveness. It is a period of great variability within an individual adolescent and among adolescents. That means that any individual adolescent could simultaneously be mature in some aspects, such as physical development, and immature in others, such as intellectual development. Moreover, two adolescents that are the same age could be markedly different in their maturity.

Research directly evaluating adolescents' capacities as defendants is limited, but in combination with developmental psychology theories, it indicates there is reason for concern. It is highly likely that the average preadolescent (e.g., 10, 11) does not have the capacities necessary to be a competent defendant. For example, these juveniles generally have difficulty thinking in hypothetical terms, considering the future consequences of their decisions. They are more likely to be impulsive and emotional. They are oriented towards peers and are increasingly concerned with the reactions that peers may have to their own behavior. These characteristics would make it difficult for the average preteen to make decisions about their legal case, decide how to help their attorney, or fully comprehend the nature of legal proceedings.

For much older adolescents (e.g., 17, 18), it is likely that they have had the opportunity to develop many of the necessary abilities. For example, many of these adolescents will have the cognitive or intellectual abilities to understand basic facts about the legal system and how it works. Questions about competence at this age are more likely to arise due to

other difficulties such as cognitive delays that could cause problems. However, research suggests that they too may still be developing some aspects of mature judgment, such as the ability to consider future consequences or think about the risks and benefits of a decision.

It is quite unclear how mid-adolescents (13-16) may fare on these abilities. We simply do not know whether at this age most adolescents, or even the average adolescent, have sufficient capacity to be a competent or effective defendant. At this point, we don't have enough information about these capacities in adolescents to know how different they are from adults, if at all, and what the implications are for how we process them through the system. Research is currently underway that will help answer these questions. The MacArthur Foundation Network on Adolescent Development and Juvenile Justice is interviewing approximately 1500 juveniles and adults who are involved with the legal system or residing in the local community.

Until legally relevant research has been conducted, we can not presume that adolescents as a group, especially very young adolescents, can participate as competent and effective defendants. This knowledge gap is crucial because adolescent defendants must function in an adversarial system that relies on the defendants to assert their rights and make critical decisions with input from counsel. This is a consideration that ought to be taken into account as we develop laws, policies, and practices that involve juveniles in criminal court processing.